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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,464	08/01/2003	John Mix	FINIS-00100	2040

28960 7590 12/13/2005  
HAVERSTOCK & OWENS LLP  
162 NORTH WOLFE ROAD  
SUNNYVALE, CA 94086

EXAMINER

TRIEU, VAN THANH

ART UNIT PAPER NUMBER

2636

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,464

Applicant(s)

MIX ET AL.

Examiner

Van T Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-6,8-14,17 and 18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,8-14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 3-6, 8-14, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by **Miley** [US 5,921,890].

Regarding claim 1, the claimed portable electronic device is configured to provide an audible signal at a repeated frequency selectable by a user wherein the repeated frequency corresponds to an interval between two tenths of a second to ten minutes and wherein the electronic device comprises (the portable programmable pacing device 1 is programmed by a user to select different bleeps/tones tempos and pitch frequencies at different timing intervals in tenth of a second and minutes, see Figs. 1-5, col. 1, lines 62-67, col. 2, lines 1-42, col. 3, lines 17-30 and col. 6, lines 45-63); and the timing unit contained within a waterproof housing (waterproof device housing, see Fig. 1, col. 2, lines 129-31); and the timing unit comprises: a plurality of buttons configured to allow the user to select a single frequency as the repeated frequency (the plurality of input buttons 13, 15, 17 and 19, see Figs. 1 and 4, col. 49-65 and col. 5, lines 20-26); and the display configured to display a numerical representation of the repeated frequency selected by the user (the LCD display 11, see Figs. 1 and 2, col. 2, lines 32-

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38, col. 4, lines 52-65 and col. 58, lines 34-67); and the power source (the rechargeable battery, see Fig. 2, col. 4, lines 49-52); and the detachable clip member configured to detachably couple to the timing unit and to a pair goggles (see Figs. 6-8, col. 3, lines 52-54 and col. 7, lines 1-23).

Regarding claim 3, all the claimed subject matters are cited in respect to claim 1 above, see Figs. 2 and 4.

Regarding claim 4, the claimed timing unit is waterproof and is formed from a high impact plastic, which reads upon the swimming pacing device 1 is waterproof, see Fig. 1, col. 2, lines 29-31.

Regarding claim 5, all the claimed subject matters are cited in respect to claim 1 above, and including programmable timing circuit (the input unit 3 with a programmable microprocessor, see Figs. 1, 2 and 4, col. 2, lines 5-8 and 43-49, col. 3, lines 1-9 and col. 5, lines 13-67).

Regarding claim 6, all the claimed subject matters are cited in respect to claims 4 and 5 above.

Regarding claim 8, all the claimed subject matters are cited in respect to claims 1 and 5 above.

Regarding claim 9, all the claimed subject matters are cited in respect to claims 1 and 5 above.

Regarding claim 10, all the claimed subject matters are cited in respect to claims 1 and 5 above.

Regarding claim 11, all the claimed subject matters are cited in respect to claims 1 and 5 above, see Figs. 1-8.

Regarding claim 12, all the claimed subject matters are cited in respect to claim 11 above, and including the storage means (the microprocessors 37 and 41 for storing software programming and information data, see Figs. 4 and 5, col. 5, lines 20-67).

Regarding claim 13, the claimed processor chip with firmware (the microprocessor chips 37 and 41, see Figs. 4 and 5.

Regarding claim 14, the claimed processor chip with firmware is configured to convert cycle rate to cycle per unit time (the microprocessor chips 37 and 41, see Figs. 4 and 5, col. 5, lines 20-67).

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Regarding claim 17, all the claimed subject matters are cited in respect to claims 4 and 11 above.

Regarding claim 18, all the claimed subject matters are cited in respect to claim 1 above.

### ***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Mackey** discloses a portable electronic device having a LCD display and a plurality of buttons/switches for selecting AM, FM band, frequency and audio volume. The electronic device is worn by a user. [US 5,956,630]

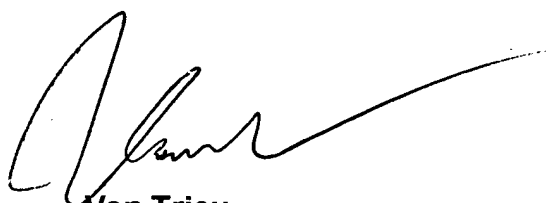
**Haglund** discloses a mobile image device for emitting selected sounds in a pattern manner and the device is attached to a goggle. [US 6,717,737]

**Boyden et al** discloses acoustic modules adapted to be worn on the head of a wearer such as eyeglasses, for producing a selected audio signal patterns. [US 6,301,367]

3. Any inquiry concerning this communication or earlier communications from examiner should be directed to primary examiner **Van Trieu** whose telephone number is (571) 272-2972. The examiner can normally be reached on Mon-Fri from 7:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. **Jeffery Hofsass** can be reached on (571) 272-2981.

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A handwritten signature in black ink, appearing to read 'Van Trieu', with a long, sweeping horizontal stroke extending to the right.

**Van Trieu**  
**Primary Examiner**  
**Date: 12/8/05**